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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,781	02/18/2004	De-Sheng Tsai	9286.32	2750
20792 7590 05/11/2007 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,781

Applicant(s)

TSAI ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22-28 and 34-41 is/are pending in the application.
- 4a) Of the above claim(s) 1-20,38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-28,34-39 and 41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/14/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/14/07 has been entered.

1. Claim 22-23, 26-28, 34-39, 41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Erdos et al, U.S. Patent Application Publication 2002/0056510. Erdos et al discloses an elastic nonwoven fabric laminate. The nonwoven fabric can comprise polypropylene fibers, and may be spunbonded, or a thermally bonded carded nonwoven of staple fibers. See paragraph 0050 and claim 4. The fabric is bonded to an elastic film layer. The laminate is subjected to heat, pressure and tension in order to form the elastic fabric. The elastic fabric laminate has good CD elongation and recovery, with a CD elongation of at least 120% and recovery of at least 80% after elongation of 100%. See paragraph 0017, 0024, 0049, The fabric can be incorporated into a variety of personal care articles including diapers. See paragraph 0058-0060. With regard to the particular uses set forth in dependent claims 34-39, since no structure is set forth in the claims, these limitations are taken as statements of intended use.

2. Erdos et al does not identically disclose the claimed processing parameters. However, as set forth above, product by process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. Therefore,

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the burden is on Applicant to show that the processing differences result in an unobvious difference between the claimed invention and the invention of Erdos et al. Further, it is noted that Erdos teaches drawing the nonwoven after it is thermally calendered. With regard to the limitation the nonwoven web consists essentially of non-elastomeric fibers, the web of Erdos only comprises non-elastic fibers. The elasticity is supplied by the elastic film layer which is not a part of the nonwoven web. It is noted that claims 27-28 recite an elastomeric film which is bonded to the nonwoven web, so the claims do not preclude the presence of additional layers.

3. Claims 22-28, 34-39,41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erdos et al, U.S. Patent Application Publication 2002/0056510 in view of Morman et al, U.S. Patent Application Publication 2003/0100238. Erdos et al discloses an elastic fabric laminate as set forth above. Erdos et al differs from the claimed invention because it does not teach employing conjugate fibers in the nonwoven. Morman et al teaches that bicomponent fibers can be employed in forming nonwovens comprising polypropylene that have elastic properties, (i.e., they stretch and recover). Bicomponent fibers are generally used to facilitate bonding due to the different melting points between the sheath and core. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed bicomponent fibers in the nonwoven of Erdos, motivated by the teaching of Morman that such fibers were useful in forming elastic nonwovens and by the expectation that the use of bicomponent fibers would facilitate bonding within the nonwoven while maintaining the strength of the fabric. See paragraph 0046.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 41 is rejected under 35 U.S.C. 102(e) and 102(a) as being anticipated by Morman et al, U.S. Patent Application Publication 2003/0100238. Morman et al discloses an elastic thermally bonded web (see paragraph 0010) which has an elasticity such that it can be stretched to about 150 percent with an 83 percent recovery. See paragraph 0057. The fabric of Morman does not comprise elastomeric fibers. The fibers can mono or bicomponent fibers such as polyolefins. See paragraph 0052 and paragraph 0046. The nonwoven webs can be spunbonded, meltblown or carded webs. See paragraph 0052. The material of Morman is formed by providing a nonwoven web and then subjecting the web to heat which is between the softening point and melting point of the fibers. The material is subjected to necking or drawing while it is being heated.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-28, 34-39, 41 are rejected under 35 U.S.C. 102(a and e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morman et al, U.S. Patent Application Publication 2003/0100238. Morman et al discloses an elastic thermally bonded web (see paragraph 0010) which has an elasticity such that it can be stretched to about 150 percent with an 83 percent recovery. See paragraph 0057. The fabric of Morman does not comprise elastomeric fibers. The fibers can mono or bicomponent fibers such as polyolefins. See paragraph 0052 and paragraph 0046. The nonwoven webs can be spunbonded, meltblown or carded webs. See paragraph 0052. The material of Morman is formed by providing a nonwoven web and then subjecting the web to heat which is between the softening point and melting point of the fibers. The material is subjected to necking or drawing while it is being heated. While Morman does disclose a process of heating and drawing the fabric in order to impart elasticity to the fabric, it does not disclose the particularly claimed drawing ratio or strain rate. However, since the instant claims are drawn to a product, not a process, the burden is shifted to Applicant to come forward with evidence showing that any process differences result in an unobvious difference between the claimed invention and the prior art invention. The material of Morman can be bonded to elastic film layers. See paragraph 0059. With regard to the particular uses set forth in the dependent claims, since no structure is set forth in the claims, these limitations are taken as statements of intended use.

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8. Applicant's arguments filed 2/14/07 have been fully considered but they are not persuasive. Applicant's arguments regarding JP 490 are moot in view of the Applicant's amendment which has overcome the rejection based on JP '490.

9. With regard to Erdos, Applicant argues that the material of Erdos does not consist essentially of non-elastomeric fibers. However, the fibers used in Erdos are not elastomeric. The elasticity is supplied by the elastic film layer. The instant claims do not preclude the presence of an elastic film layer. Dependent claims 26-28 recite that the structure includes an elastic layer. Therefore, the rejection is maintained.

10. Applicant's arguments regarding Erdos in JP '490 are moot in view of the new grounds of rejection

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chappell et al, U.S. Patent No. 5,891,544 discloses nonwoven webs comprising no elastomeric material which stretches and recovers. See abstract as well as col. 22, lines 10-30.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

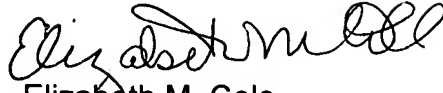
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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The fax number for all official faxes is (571) 273-8300.

A handwritten signature in black ink, appearing to read "Elizabeth M. Cole".

Elizabeth M. Cole
Primary Examiner
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